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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID SLACK, individually, and on behalf
of all others similarly situated, *et al.*

Plaintiffs,

vs.

INTERNATIONAL UNION OF OPERATING
ENGINEERS, a trade union, *et al.*

Defendants.

Case No.: 3:13-cv-05001-EMC

CLASS ACTION

**STIPULATION AND ~~PROPOSED~~
ORDER TO DISMISS THE THIRD
THROUGH EIGHTH AND TENTH
CLAIMS FOR RELIEF IN THE SECOND
AMENDED COMPLAINT**

1 TO THE COURT, TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

2 This Stipulation is entered into by and between Plaintiffs David Slack, John Jarboe, Ken
3 Bettis, Kenny Mendoza and Clyde Eli (“Plaintiffs”) and Defendants Russell E. Burns, Dan
4 Reding, Jim Sullivan, Carl Goff, Pete Figueiredo, Steve Ingersoll, Kevin J. Albanese, F.G.
5 Crosthwaite, Thomas Holsman, John M. Humber, and Richard Piombo (“Defendants”) (Plaintiffs
6 and Defendants are the “Parties”). The Stipulation is entered into based upon the following facts:

- 7 A. On October 20, 2014, with leave of Court, Plaintiffs filed their Second Amended
8 Complaint (“SAC”). (Dkts. 176, 179.) Defendants filed a Motion to Dismiss the SAC.
9 (Dkts. 187, 188.)
- 10 B. On March 16, 2015, the Court issued its Order Granting in Part and Denying in Part
11 Defendants’ Motion to Dismiss. (Dkt. 199.)
- 12 C. Following the Court’s ruling on all Defendants’ Motions to Dismiss, the SAC
13 presently alleges ERISA violations with respect to the “Longview investment” made
14 by the Pension Fund (Claims 1 and 2), other, factually distinct ERISA violations
15 related to alleged CBA circumvention affecting several Trusts (Claims 3-7) and
16 alleged improper write-offs of signatory employer debts affecting all of the Trusts
17 (Claim 8), and LMRDA violations against Defendants Burns, Goff and Reding related
18 to alleged statements made following the filing of this action (Claim 10).
- 19 D. The Court held a Case Management Conference on April 2, 2015. The Parties have
20 commenced discovery in the matter.
- 21 E. The Parties have agreed to the dismissal with prejudice of the Third through Eighth
22 Claims for Relief, with each Party to bear their own fees and costs related to those
23 Claims.
- 24 F. Plaintiffs and Defendants Russell E. Burns, Dan Reding, and Carl Goff have agreed to
25 the dismissal without prejudice of the Tenth Claim for Relief
- 26 Therefore, Plaintiffs and the Defendants stipulate as follows:
- 27 1. As to the Third through Eighth Claims for Relief in the SAC, Plaintiffs, in their
28

individual capacities as no class has been certified in this matter, hereby dismiss those Claims with prejudice. As to the Third through Eighth Claims for Relief in the SAC, the claims of absent putative class members are dismissed without prejudice.

2. All Parties shall bear their own fees and costs with respect to the Third through Eighth Claims for Relief in the SAC.

3. As to the Tenth Claim for Relief in the SAC, Plaintiffs, in their individual capacities as no class has been certified in this matter, hereby dismiss the Tenth Claim without prejudice. As to the Tenth Claim for Relief in the SAC, the claims of absent putative class members are dismissed without prejudice.

Respectfully submitted,

Dated: June 23, 2015

BERNS WEISS LLP

By: /s/ Lee A. Weiss

Jeffrey K. Berns
Lee A. Weiss
Albert G. Lum

MOORE & LEVIANT LLP

J. Mark Moore
H. Scott Leviant

Attorneys for Plaintiffs David Slack, John Jarboe, Ken Bettis, Kenny Mendoza and Clyde Eli

Dated: June 23, 2015

LAW OFFICE OF KENNETH C. ABSALOM

By: /s/ George R. Nemiroff

Kenneth C. Absalom
George R. Nemiroff
Attorneys for Defendants Russell E Burns, Dan Reding, Carl Goff, Pete Figueiredo, and Steve Ingersoll

Dated: June 23, 2015

COX, CASTLE & NICHOLSON LLP

By: /s/ Dwayne McKenzie

Dwayne McKenzie

Attorneys for Defendants Kevin J. Albanese, F.G.
Crosthwaite, Thomas Holsman, John M. Humber,
Richard Piombo

ECF CERTIFICATION

Pursuant to Local Rule 5-1(i)(3), the filing attorney attests that he has obtained concurrence regarding the filing of this document from the signatories to the document.

Dated: June 23, 2015

By: /s/ Lee A. Weiss

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ORDER

Pursuant to the foregoing Stipulation of counsel and for good cause shown, IT IS
HEREBY ORDERED that:

1. The Third through Eighth Claims for Relief in the Second Amended Complaint (“SAC”) are dismissed by Plaintiffs, in their individual capacities, *with* prejudice as to the Plaintiffs.
2. The Third through Eighth Claims for Relief in the SAC are dismissed *without* prejudice as to the absent putative class members.
3. All Parties shall bear their own fees and costs with respect to the Third through Eighth Claims for Relief in the SAC.
4. The Tenth Claim for Relief in the SAC is dismissed by Plaintiffs, in their individual capacities, *without* prejudice.
5. The Tenth Claim for Relief in the SAC is dismissed *without* prejudice as to the absent putative class members.

IT IS SO ORDERED.

Dated: 6/29, 2015

